

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

| | | |
|------------------------------------|---|----------------------------|
| SIGHT SCIENCES, INC., |) | |
| |) | C. A. No.: 21-1317-GBW-SRF |
| Plaintiff, |) | |
| |) | JURY TRIAL DEMANDED |
| v. |) | |
| |) | |
| IVANTIS, INC., ALCON RESEARCH LLC, |) | |
| ALCON VISION, LLC AND ALCON INC., |) | |
| |) | |
| Defendants. |) | |

**SIGHT SCIENCES, INC.'S RESPONSE TO DEFENDANTS'
STATEMENT OF FACTS IN SUPPORT OF DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT NO. 3 OF INVALIDITY FOR INDEFINITENESS (D.I. 301)**

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Dated: November 2, 2023

1. **Not disputed.**

2. **Not disputed.**

3. **Not disputed.**

4. **Not disputed.**

5. **Not disputed.**

6. **Not disputed.**

7. **Not disputed.**

8. **Disputed and not material.** As of June 26, 2006, a POSA would have been able to measure “blocking” of fluid *in vivo*. (Ex. 90 (Downs Reb.) ¶¶1092; Ex. 93 (Downs 9/28 Tr.) 41:22-42:10, 45:5-19, 77:19-78:14, 103:12-15, 158:4-11).) Sight further disputes any implication that such *in vivo* testing of fluid flow or blocking of fluid is necessary to show that the so-called “Block Limitation”¹ is satisfied. In view of the teachings of the Asserted Patents and his/her knowledge, skill, and experience, a POSA would have been able to infer with reasonable certainty how a device functions *in vivo* from the design of the device, from analytical or computational modeling, or perfusion studies or fluorescent dye studies in cadaver eyes. (Ex. 90 (Downs Reb.) ¶¶1068-1072, 1078-1079, 1092; Ex. 93 (Downs 9/28 Tr.) 12:15-24, 45:5-19, 64:10-65:25, 77:19-78:14, 103:5-15, 111:18-114:17, 116:15-117:5, 130:14-132:4.) Defendants and their experts have asserted that a POSA would have recognized—without any experimentation, measurement, or modeling at all—that certain devices would facilitate and not significantly block flow *in vivo*, based solely on the presence of structural attributes that they assert would minimize contact of the support with the walls of Schlemm’s canal. (Ex. 87 (’443 IPR Pet.) 30 (“A POSITA would have recognized that these various forms and configurations were designed to facilitate, rather than

¹ Sight would prefer “Flow Limitation” but will use Defendants’ term to avoid confusion.

substantially interfere with, transmural flow across Schlemm's canal."), 39-41 ("Thus, Bergheim discloses devices with very large holes relative to the size of the device in addition to the troughs that all would reduce the surface area contact with the wall and improve aqueous flow."), 50; Ex. 88 ('443 IPR Reynard Decl.) ¶¶69-71 ("These features and shapes would minimize contact of the support with the walls of Schlemm's canal. Thus, [this] support would not 'substantially interfere with transmural flow' or 'significantly block . . . fluid outflow from the trabecular meshwork.'"), 92-93; Ex. 89 (Tanna Op.) ¶¶141, 150, 153-154, 157, 239, 443.)

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